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Supreme Court of the United States

October Term, 1946.

No. **229**

WILLIAM TALMADGE SPEARS, BETTIE TUNSELL,
and ISAIAH H. SPEARS, (I. H. SPEARS),
Petitioners-Appellants,

vs.

EVA MAE SPEARS, Individually and EVA MAE
SPEARS, as Special Administrator of the Estate of DR.
MANSFIELD L. SPEARS, Deceased, AETNA CASU-
ALTY & SURETY COMPANY OF HARTFORD,
CONN., and COMMUNITY NATIONAL BANK OF
PONTIAC, MICHIGAN,

Respondents-Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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INDEX.

THE PETITION.

	Page
Petition for Writ	1
Statement of Matter Involved	2
Statement Disclosing basis of Jurisdiction of Supreme Court	4
Questions Presented	6
Reasons for Allowance of Writ	7

SUPPORTING BRIEF.

Subject matter, Page references and Table of cases, Text books and Statutes Cited	10-15
Jurisdiction Statement	10
Statement of Case	11
Assignment of Errors	13
Argument and References to Record	13

AUTHORITIES.

Application Wis. Alum. Research Foundation, 4 F. R. D. 263	11
54 Am. Jur. Sec. 8, and Sec. 343	5, 15
Constitution Article III Section 2	2, 3, 5, 7, 11, 13, 14
Congress Act U. S. C. A. Section 41 (1) ..	2, 4, 5, 7, 11, 13, 14
Congress Act U. S. C. A. Section 112, Section 2 ..	5, 7, 11, 13
Congress Act U. S. C. A. 28 following Section 723c ..	5, 12, 13
Give Federal Courts Jurisdiction	7
R. C. P. Rule 12 (b) U. S. C. A. following 723c	11, 14
Rule 8, 28 U. S. C. A. following 723c	12
Section 240 (a) Judicial Code	7

II.

Page

CASES:

Blacker v. Thatcher, 145 F. 2nd 255	4, 11, 13, 15
Burghane v. Radio Corp. of A., 4 F. R. D. 446	11
Boston Casualty Co. v. Bath Iron Works Corp. 47 F. Supp. 616	12
Bowles v. Schultz, 54 F. Supp. 708	12
Bowles v. Ohse, 4 F. R. D. 404	12
Banon v. Burnside, 121 U. S. 186	15
Byers v. McAuley, 149 U. S. 608	15
Canal v. Munson Hotel Co., 149 F. 2nd 404; 61 F. Supp. 1	11
First National Bank v. Bridgeport Trust Co., 117 Fed. 969	14
Griffith v. Bank of N. Y., 147 F. 2nd 899	11, 14
Garret v. First National Bank & Trust Co., 153 F. 2nd 289	14
Hyde v. Stone, 20 How. 170-6	4, 5, 12
Hastings v. Selby Oil Co., 319 U. S. 348	15
Kaffenberger v. Kremer, <i>et al.</i> , 4 F. R. D. 476-478 ...	11
Lehigh Valley R. Co. v. Peaslee, 47 U. S. 55	12
Markham v. Allen, 326 U. S. 490	4, 6, 12, 13, 14, 15
Miami County Nat. Bank of Paola Kansas v. Ban- croft, 121 F. 2nd 921	4, 11, 14
Miss. Pub. Co. v. Murphree, 326 U. S. 440, 441	5
Mundet v. Winter Haven, 320 U. S. 228	5
Monhair v. Higgins, 39 F. Supp. 633; 132 F. 2nd 990 ..	12
McClelland v. Garland, 217 U. S. 258	14
Powell v. Rothensieris, 47 F. Supp. 1019	12
Payne v. Hook, 7 Wall. 425, 430	13
Pure Oil Co. vs. Standard Oil Co., 2 F. 2nd 260	15
Rosenberg v. Baum, 153 F. 2nd 13	4, 15
Roselle v. Quinn, 47 F. Supp. 740	12
Suydam v. Broadnax, 14 Pet. 67	4, 5, 12, 13, 14

III.

	Page
Sutton v. English, 246 U. S. 199	15
U. S. v. Assn. Am. R. R., <i>et al.</i> , 4 F. R. D. 510	11
Union Bank v. Jolly, Adm'r 18 How. 503	12
Williams <i>et al.</i> v. Green Bay & Western R. Co., 326 U. S. 560	6
Wieland vs. Wickard, 250	11
Wall & B. Corp. v. Munson Lines, 58 F. Supp. 101-109	11
Waterman v. Canal Louisiana Bank & Trust Co., 215 U. S. 33	14

Page	
10	Section 1. General
11	Section 2. Definitions
12	Section 3. Purpose
13	Section 4. Scope
14	Section 5. Authority
15	Section 6. Administration
16	Section 7. Enforcement
17	Section 8. Miscellaneous
18	Section 9. Final Provisions
19	Section 10. Repeal
20	Section 11. Severability
21	Section 12. Short Title
22	Section 13. Effective Date
23	Section 14. Construction
24	Section 15. Savings
25	Section 16. Transition
26	Section 17. General
27	Section 18. Definitions
28	Section 19. Purpose
29	Section 20. Scope
30	Section 21. Authority
31	Section 22. Administration
32	Section 23. Enforcement
33	Section 24. Miscellaneous
34	Section 25. Final Provisions
35	Section 26. Repeal
36	Section 27. Severability
37	Section 28. Short Title
38	Section 29. Effective Date
39	Section 30. Construction
40	Section 31. Savings
41	Section 32. Transition
42	Section 33. General
43	Section 34. Definitions
44	Section 35. Purpose
45	Section 36. Scope
46	Section 37. Authority
47	Section 38. Administration
48	Section 39. Enforcement
49	Section 40. Miscellaneous
50	Section 41. Final Provisions
51	Section 42. Repeal
52	Section 43. Severability
53	Section 44. Short Title
54	Section 45. Effective Date
55	Section 46. Construction
56	Section 47. Savings
57	Section 48. Transition
58	Section 49. General
59	Section 50. Definitions
60	Section 51. Purpose
61	Section 52. Scope
62	Section 53. Authority
63	Section 54. Administration
64	Section 55. Enforcement
65	Section 56. Miscellaneous
66	Section 57. Final Provisions
67	Section 58. Repeal
68	Section 59. Severability
69	Section 60. Short Title
70	Section 61. Effective Date
71	Section 62. Construction
72	Section 63. Savings
73	Section 64. Transition
74	Section 65. General
75	Section 66. Definitions
76	Section 67. Purpose
77	Section 68. Scope
78	Section 69. Authority
79	Section 70. Administration
80	Section 71. Enforcement
81	Section 72. Miscellaneous
82	Section 73. Final Provisions
83	Section 74. Repeal
84	Section 75. Severability
85	Section 76. Short Title
86	Section 77. Effective Date
87	Section 78. Construction
88	Section 79. Savings
89	Section 80. Transition
90	Section 81. General
91	Section 82. Definitions
92	Section 83. Purpose
93	Section 84. Scope
94	Section 85. Authority
95	Section 86. Administration
96	Section 87. Enforcement
97	Section 88. Miscellaneous
98	Section 89. Final Provisions
99	Section 90. Repeal
100	Section 91. Severability
101	Section 92. Short Title
102	Section 93. Effective Date
103	Section 94. Construction
104	Section 95. Savings
105	Section 96. Transition
106	Section 97. General
107	Section 98. Definitions
108	Section 99. Purpose
109	Section 100. Scope
110	Section 101. Authority
111	Section 102. Administration
112	Section 103. Enforcement
113	Section 104. Miscellaneous
114	Section 105. Final Provisions
115	Section 106. Repeal
116	Section 107. Severability
117	Section 108. Short Title
118	Section 109. Effective Date
119	Section 110. Construction
120	Section 111. Savings
121	Section 112. Transition
122	Section 113. General
123	Section 114. Definitions
124	Section 115. Purpose
125	Section 116. Scope
126	Section 117. Authority
127	Section 118. Administration
128	Section 119. Enforcement
129	Section 120. Miscellaneous
130	Section 121. Final Provisions
131	Section 122. Repeal
132	Section 123. Severability
133	Section 124. Short Title
134	Section 125. Effective Date
135	Section 126. Construction
136	Section 127. Savings
137	Section 128. Transition
138	Section 129. General
139	Section 130. Definitions
140	Section 131. Purpose
141	Section 132. Scope
142	Section 133. Authority
143	Section 134. Administration
144	Section 135. Enforcement
145	Section 136. Miscellaneous
146	Section 137. Final Provisions
147	Section 138. Repeal
148	Section 139. Severability
149	Section 140. Short Title
150	Section 141. Effective Date
151	Section 142. Construction
152	Section 143. Savings
153	Section 144. Transition
154	Section 145. General
155	Section 146. Definitions
156	Section 147. Purpose
157	Section 148. Scope
158	Section 149. Authority
159	Section 150. Administration
160	Section 151. Enforcement
161	Section 152. Miscellaneous
162	Section 153. Final Provisions
163	Section 154. Repeal
164	Section 155. Severability
165	Section 156. Short Title
166	Section 157. Effective Date
167	Section 158. Construction
168	Section 159. Savings
169	Section 160. Transition
170	Section 161. General
171	Section 162. Definitions
172	Section 163. Purpose
173	Section 164. Scope
174	Section 165. Authority
175	Section 166. Administration
176	Section 167. Enforcement
177	Section 168. Miscellaneous
178	Section 169. Final Provisions
179	Section 170. Repeal
180	Section 171. Severability
181	Section 172. Short Title
182	Section 173. Effective Date
183	Section 174. Construction
184	Section 175. Savings
185	Section 176. Transition
186	Section 177. General
187	Section 178. Definitions
188	Section 179. Purpose
189	Section 180. Scope
190	Section 181. Authority
191	Section 182. Administration
192	Section 183. Enforcement
193	Section 184. Miscellaneous
194	Section 185. Final Provisions
195	Section 186. Repeal
196	Section 187. Severability
197	Section 188. Short Title
198	Section 189. Effective Date
199	Section 190. Construction
200	Section 191. Savings
201	Section 192. Transition
202	Section 193. General
203	Section 194. Definitions
204	Section 195. Purpose
205	Section 196. Scope
206	Section 197. Authority
207	Section 198. Administration
208	Section 199. Enforcement
209	Section 200. Miscellaneous
210	Section 201. Final Provisions
211	Section 202. Repeal
212	Section 203. Severability
213	Section 204. Short Title
214	Section 205. Effective Date
215	Section 206. Construction
216	Section 207. Savings
217	Section 208. Transition
218	Section 209. General
219	Section 210. Definitions
220	Section 211. Purpose
221	Section 212. Scope
222	Section 213. Authority
223	Section 214. Administration
224	Section 215. Enforcement
225	Section 216. Miscellaneous
226	Section 217. Final Provisions
227	Section 218. Repeal
228	Section 219. Severability
229	Section 220. Short Title
230	Section 221. Effective Date
231	Section 222. Construction
232	Section 223. Savings
233	Section 224. Transition
234	Section 225. General
235	Section 226. Definitions
236	Section 227. Purpose
237	Section 228. Scope
238	Section 229. Authority
239	Section 230. Administration
240	Section 231. Enforcement
241	Section 232. Miscellaneous
242	Section 233. Final Provisions
243	Section 234. Repeal
244	Section 235. Severability
245	Section 236. Short Title
246	Section 237. Effective Date
247	Section 238. Construction
248	Section 239. Savings
249	Section 240. Transition
250	Section 241. General
251	Section 242. Definitions
252	Section 243. Purpose
253	Section 244. Scope
254	Section 245. Authority
255	Section 246. Administration
256	Section 247. Enforcement
257	Section 248. Miscellaneous
258	Section 249. Final Provisions
259	Section 250. Repeal
260	Section 251. Severability
261	Section 252. Short Title
262	Section 253. Effective Date
263	Section 254. Construction
264	Section 255. Savings
265	Section 256. Transition
266	Section 257. General
267	Section 258. Definitions
268	Section 259. Purpose
269	Section 260. Scope
270	Section 261. Authority
271	Section 262. Administration
272	Section 263. Enforcement
273	Section 264. Miscellaneous
274	Section 265. Final Provisions
275	Section 266. Repeal
276	Section 267. Severability
277	Section 268. Short Title
278	Section 269. Effective Date
279	Section 270. Construction
280	Section 271. Savings
281	Section 272. Transition
282	Section 273. General
283	Section 274. Definitions
284	Section 275. Purpose
285	Section 276. Scope
286	Section 277. Authority
287	Section 278. Administration
288	Section 279. Enforcement
289	Section 280. Miscellaneous
290	Section 281. Final Provisions
291	Section 282. Repeal
292	Section 283. Severability
293	Section 284. Short Title
294	Section 285. Effective Date
295	Section 286. Construction
296	Section 287. Savings
297	Section 288. Transition
298	Section 289. General
299	Section 290. Definitions
300	Section 291. Purpose
301	Section 292. Scope
302	Section 293. Authority
303	Section 294. Administration
304	Section 295. Enforcement
305	Section 296. Miscellaneous
306	Section 297. Final Provisions
307	Section 298. Repeal
308	Section 299. Severability
309	Section 300. Short Title
310	Section 301. Effective Date
311	Section 302. Construction
312	Section 303. Savings
313	Section 304. Transition
314	Section 305. General
315	Section 306. Definitions
316	Section 307. Purpose
317	Section 308. Scope
318	Section 309. Authority
319	Section 310. Administration
320	Section 311. Enforcement
321	Section 312. Miscellaneous
322	Section 313. Final Provisions
323	Section 314. Repeal
324	Section 315. Severability
325	Section 316. Short Title
326	Section 317. Effective Date
327	Section 318. Construction
328	Section 319. Savings
329	Section 320. Transition
330	Section 321. General
331	Section 322. Definitions
332	Section 323. Purpose
333	Section 324. Scope
334	Section 325. Authority
335	Section 326. Administration
336	Section 327. Enforcement
337	Section 328. Miscellaneous
338	Section 329. Final Provisions
339	Section 330. Repeal
340	Section 331. Severability
341	Section 332. Short Title
342	Section 333. Effective Date
343	Section 334. Construction
344	Section 335. Savings
345	Section 336. Transition
346	Section 337. General
347	Section 338. Definitions
348	Section 339. Purpose
349	Section 340. Scope
350	Section 341. Authority
351	Section 342. Administration
352	Section 343. Enforcement
353	Section 344. Miscellaneous
354	Section 345. Final Provisions
355	Section 346. Repeal
356	Section 347. Severability
357	Section 348. Short Title
358	Section 349. Effective Date
359	Section 350. Construction
360	Section 351. Savings
361	Section 352. Transition
362	Section 353. General
363	Section 354. Definitions
364	Section 355. Purpose
365	Section 356. Scope
366	Section 357. Authority
367	Section 358. Administration
368	Section 359. Enforcement
369	Section 360. Miscellaneous
370	Section 361. Final Provisions
371	Section 362. Repeal
372	Section 363. Severability
373	Section 364. Short Title
374	Section 365. Effective Date
375	Section 366. Construction
376	Section 367. Savings
377	Section 368. Transition
378	Section 369. General
379	Section 370. Definitions
380	Section 371. Purpose
381	Section 372. Scope
382	Section 373. Authority
383	Section 374. Administration
384	Section 375. Enforcement
385	Section 376. Miscellaneous
386	Section 377. Final Provisions
387	Section 378. Repeal
388	Section 379. Severability
389	Section 380. Short Title
390	Section 381. Effective Date
391	Section 382. Construction
392	Section 383. Savings
393	Section 384. Transition
394	Section 385. General
395	Section 386. Definitions
396	Section 387. Purpose
397	Section 388. Scope
398	Section 389. Authority
399	Section 390. Administration
400	Section 391. Enforcement
401	Section 392. Miscellaneous
402	Section 393. Final Provisions
403	Section 394. Repeal
404	Section 395. Severability
405	Section 396. Short Title
406	Section 397. Effective Date
407	Section 398. Construction
408	Section 399. Savings
409	Section 400. Transition
410	Section 401. General
411	Section 402. Definitions
412	Section 403. Purpose
413	Section 404. Scope
414	Section 405. Authority
415	Section 406. Administration
416	Section 407. Enforcement
417	Section 408. Miscellaneous
418	Section 409. Final Provisions
419	Section 410. Repeal
420	Section 411. Severability
421	Section 412. Short Title
422	Section 413. Effective Date
423	Section 414. Construction
424	Section 415. Savings
425	Section 416. Transition
426	Section 417. General
427	Section 418. Definitions
428	Section 419. Purpose
429	Section 420. Scope
430	Section 421. Authority
431	Section 422. Administration
432	Section 423. Enforcement
433	Section 424. Miscellaneous
434	Section 425. Final Provisions
435	Section 426. Repeal
436	Section 427. Severability
437	Section 428. Short Title
438	Section 429. Effective Date
439	Section 430. Construction
440	Section 431. Savings
441	Section 432. Transition
442	Section 433. General
443	Section 434. Definitions
444	Section 435. Purpose
445	Section 436. Scope
446	Section 437. Authority
447	Section 438. Administration
448	Section 439. Enforcement
449	Section 440. Miscellaneous
450	Section 441. Final Provisions
451	Section 442. Repeal
452	Section 443. Severability
453	Section 444. Short Title
454	Section 445. Effective Date
455	Section 446. Construction
456	Section 447. Savings
457	Section 448. Transition
458	Section 449. General
459	Section 450. Definitions
460	Section 451. Purpose
461	Section 452. Scope
462	Section 453. Authority
463	Section 454. Administration
464	Section 455. Enforcement
465	Section 456. Miscellaneous
466	Section 457. Final Provisions
467	Section 458. Repeal
468	Section 459. Severability
469	Section 460. Short Title
470	Section 461. Effective Date
471	Section 462. Construction
472	Section 463. Savings
473	Section 464. Transition
474	Section 465. General
475	Section 466. Definitions
476	Section 467. Purpose
477	Section 468. Scope
478	Section 469. Authority
479	Section 470. Administration
480	Section 471. Enforcement
481	Section 472. Miscellaneous
482	Section 473. Final Provisions
483	Section 474. Repeal
484	Section 475. Severability
485	Section 476. Short Title
486	Section 477. Effective Date
487	Section 478. Construction
488	Section 479. Savings
489	Section 480. Transition
490	Section 481. General
491	Section 482. Definitions
492	Section 483. Purpose
493	Section 484. Scope
494	Section 485. Authority
495	Section 486. Administration
496	Section 487. Enforcement
497	Section 488. Miscellaneous
498	Section 489. Final Provisions
499	Section 490. Repeal
500	Section 491. Severability
501	Section 492. Short Title
502	Section 493. Effective Date
503	Section 494. Construction
504	Section 495. Savings
505	Section 496. Transition
506	Section 497. General
507	Section 498. Definitions
508	Section 499. Purpose
509	Section 500. Scope
510	Section 501. Authority
511	Section 502. Administration
512	Section 503. Enforcement
513	Section 504. Miscellaneous
514	Section 505. Final Provisions
515	Section 506. Repeal
516	Section 507. Severability
517	Section 508. Short Title
518	Section 509. Effective Date
519	Section 510. Construction
520	Section 511. Savings
521	

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No.

WILLIAM TALMADGE SPEARS, BETTIE TUNSELL,
and ISAIAH H. SPEARS, (I. H. SPEARS),
Petitioners-Appellants,

vs.

EVA MAE SPEARS, individually and EVA MAE
SPEARS, as special administrator of the estate of DR.
MANSFIELD L. SPEARS, Deceased, AETNA CAS-
UALTY & SURETY COMPANY OF HARTFORD,
CONN., and COMMUNITY NATIONAL BANK of
Pontiac, Michigan,

Respondents-Appellees.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT.**

To the Honorable Chief Justice of the United States,
and Associate Justices of the Supreme Court of the United
States:

Your petitioners respectfully show:

I.

That Mansfield L. Spears departed this life, testate, on
the 16th day of September 1945, a Citizen of the United

States, resident at Pontiac, Michigan leaving an estate of approximately \$45,000.00, personal and real property, all in his sole name; left several wills, a wife, Eva Mae Spears, one of the defendans, a son, William Talmadge Spears, one of the petitioners, and several brothers and sisters; that Bettie Tunsell, one of the petitioners is a sister named in one of the wills; that Isaiah H. Spears, one of the petitioners, is an assignee of the other petitioners;

That all of the petitioners are citizens of California and Florida, that all the respondents are citizens of the State of Michigan.

That the amount in controversy exceeds the sum of \$3,000.00, exclusive of interest and costs in favor of each petitioner as against each respondent. This is a suit of a civil nature, in equity, brought by non-resident citizens of the United States, authorized to sue, of which Federal Court are given jurisdiction by Article III, Section 2, Constitution of the United States, and Act of Congress, Section 24 (1), 28 U. S. C. A. Section 41 (1).

This case is a controversy within the meaning of Art. III Sec. 2, Const. United States.

II.

This is a suit in equity brought in the District Court of the United States for the Eastern District of Michigan, Southern Division by William Talmadge Spears, Bettie Tunsell, and Isaiah H. Spears, petitioners, against Eva Mae Spears, Individually, and Eva Mae Spears, as Special Administratrix of the Estate of Dr. Mansfield L. Spears, Deceased, Aetna Casualty & Surety Company of Hartford, Conn., and Community National Bank of Pontiac, Michigan, Respondents, for a claimed share in the estate of Mansfield L. Spears, deceased, and asking an accounting; declaration

of heirship; construction of a will; declaration of interest of Mansfield L. Spears, deceased, Estate in the bank account in the defendant Community National Bank of Pontiac, Michigan in the sole name of Mansfield L. Spears or M. L. Spears on the 16th day of September 1945; declaration of plaintiffs' interest in the estate of Mansfield L. Spears, deceased; quieting title to the land described in complaint in William Talmadge Spears as heir at law of Mansfield L. Spears, deceased; partitioning of interest; and judgment against the administrator in such sum as may be found due under an accounting in favor of said estate (Tr. p. 1 to 10 and Supplemental Tr. Exhibit I at pages 1 and 2, Certified Record in this cause).

This is a Case and a Controversy within the meaning of Article III Section 2 Constitution of the United States and the Acts of Congress made in pursuance thereof of which the Federal Courts have jurisdiction.

The respondents were served with a summons and a copy of the complaint (see Tr. pages 11, 12, 23, 24 and 25); the respondents, each filed motion to dismiss, and Aetna Casualty & Surety Company also filed motion to QUASH (Tr. pages 11 to 22 and Supplemental Tr. Exhibits I to XI, pages 1 to 43).

The District Court rendered judgment in favor of respondents, sustaining the motions and dismissing the suit (Tr. 22 and 23).

Petitioners prosecuted an appeal from said judgment to the Circuit Court of Appeals for the Sixth Circuit, which Court on the 5th day of June 1947, affirmed the judgment of the District Court in all parts except one, and directed the District Court to dismiss said cause with prejudice. (Tr. Supplemental page 46 and following, including Opinion.)

(a) Petitioners say the Honorable Circuit Court of Appeals for the Sixth Circuit committed error in holding that the Federal Court has no jurisdiction in this case.

Suydam v. Broadnax, 14 Pet. 67; *Hyde v. Stone*, 20 How. 170-6; 28 U. S. C. A. 41 (1); Art. III, Sec. 2 Const. U. S.; *Markham v. Allen*, 326 U. S. 490 and cited Cases.

(b) Petitioners say said decision is in conflict with the decisions of other Circuit Court of Appeals in similar matter.

Miama County Nat. Bank of Paola Kansas v. Bancroft, 121 F. 2nd 921;
Blacker v. Thatcher, 145 F. 2nd 255;
Rosenberg v. Baum, 153 F. 2nd 13;

(c) Said decision is in conflict with a long line of decisions of the Supreme Court of the United States on the same Federal question as to controversies and cases within the meaning of Article III of the Constitution and the Acts of Congress made in pursuance thereof.

Markham v. Allen, 326 U. S. 490, and cases cited.

(d) The judgment of the Honorable Circuit Court of Appeals for the Sixth Circuit is in conflict with the decisions of the Supreme Court of the United States established by a long series of decisions of said Court, that Federal Courts of equity have jurisdiction to entertain suits "in favor of creditors, legatees, heirs," and other claimants against a decedent's estate "to establish their claims" so long as the Federal court does not interfere with the probate proceeding or assume general control of the property in the custody of the state court.

Markham v. Allen, 326 U. S. 490, and cases cited.

(e) The Honorable Circuit Court of Appeals for the Sixth Circuit committed error in attempting to abdicate

its authority and jurisdiction under Art. III of the Constitution and the Acts of Congress to other jurisdictions.

Hyde v. Stone, 20 How. 170, 176;

Suydam v. Broadnax, 14 Pet. 67; 54 Am. Jur. Sec. 8, and Sec. 343.

The fact that the District Court in the exercise of the jurisdiction which Congress has conferred upon it, is required to interpret state law is not of itself a sufficient reason for withholding relief to petitioners. *Mundet v. Winter Haven*, 320 U. S. 228.

The Honorable Circuit Court of Appeals for the Sixth Circuit committed error in giving judgment directing the District Court to dismiss with prejudice, since that case arises under the Constitution and Act of Congress and is not subject to restrictions or ouster by state legislation, directly or indirectly.

Art. III Sec. 2; 28 U. S. C. A. 41 (1).

And disclosing basis for contention the United States Supreme Court has jurisdiction to review the judgment, further,

(f) The petitioners-appellants are citizens of California and Florida; Respondents-appellees are citizens of Michigan; the amount in controversy exclusive of interest and costs, exceeds \$3,000.00 (Tr. pages 1 to 10 and Supplemental Tr. Exhibit I pages 1 and 2); the Honorable Circuit Court of Appeals for the Sixth Circuit committed error in holding that the Federal Court was without jurisdiction and directing the District Court to dismiss with prejudice (Tr. Supplemental following page 46 and opinion).

Art. III Sec. 2, Const. U. S.

28 U. S. C. A. 41 (1);

28 U. S. C. A. 112, Sec. 2.

1 Stat. 275, 276, 28 U. S. C. A. following 723 C.

Miss. Pub. Co. v. Murphree, 326 U. S. 440, 441.

(g) The Circuit Court of Appeals for the Sixth Circuit committed error in deciding a Federal question in a way probably in conflict with the applicable decisions of the Supreme Court of the United States.

Williams et al. v. Green Bay & Western R. Co., 326 U. S. 560.

(h) The Circuit Court of Appeals for the Sixth Circuit has departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by the lower Court as to call for the exercise of the Supreme Court's supervision.

(i) The Circuit Court of Appeals for the Sixth Circuit in rendering judgment dismissing this cause with prejudice has rendered judgment in conflict with the established long series of decisions of the Supreme Court of the United States to the contrary.

Markham v. Allen, 326 U. S. 490, and cases cited.

Questions Presented.

1.

Does the District Court of the United States have jurisdiction of a suit in equity brought by petitioners against respondents to determine their asserted right to share in decedent's estate which is in course of probate administration in the state court?

2.

Has the Federal Court equitable jurisdiction to require an accounting against respondents, and in favor of the

estate, and petitioners, in order to determine petitioners' interest?

3.

Has the Federal Court jurisdiction to declare or determine heirship of William Talmadge Spears and his interest as sole heir in the estate of Mansfield L. Spears, deceased?

4.

Has the Federal Court jurisdiction to construe a will so as to determine such interest; to declare interest of petitioners, to declare the interest of the Mansfield L. Spears, deceased, estate in the \$18,240.00 plus in the hands of the defendant, Community National Bank of Pontiac, Michigan in the sole name of Mansfield L. Spears or M. L. Spears, September 16, 1945?

5.

The Reasons relied on for the Writs.

The Const. U. S. Art. III Sec. 2, and Act of Congress 28 U. S. C. A. 41 (1);

28 U. S. C. A. 112, Sec. 2, Give Federal Courts Jurisdiction, and the Judgment

of the Honorable Circuit Court of Appeals for the Sixth Circuit is in conflict with Art. III Sec. 2, U. S. Const. and the Acts of Congress made in pursuance thereof.

Section 240 (a) of the Judicial Code, Amended, provides, In any case, Civil or criminal, in a Circuit Court of Appeals, it shall be competent for the Supreme Court of the United States upon petition of any party thereto, whether government, or other litigant, to require by Certiorari,

either before, or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with the like effect, as if the cause had been brought there by unrestricted Writ of Error or Appeal.

Your petitioners believe that the aforesaid judgment of the Honorable Circuit Court of Appeals for the Sixth Circuit is erroneous and that this Honorable Court should require the said case to be certified to it for its review and determination in conformity with the provisions of the Act of Congress in such cases made and provided.

WHEREFORE, Your Petitioners respectfully pray that a Writ of Certiorari may be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit Commanding the said Court to Certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in said case therein, entitled, William Talmage Spears, Bettie Tunsell, and I. H. Spears, Plaintiffs-Appellants-Petitioners vs. Eva Mae Spears, Individually, and Eva Mae Spears, as Special Administratrix of the Estate of Dr. Mansfield L. Spears, deceased, Aetna Casualty & Surety Company of Hartford, Conn., and Community National Bank of Pontiac, Michigan, Defendants-Appellees-Respondents, No. 10,383, to the end that said case may be reviewed and determined by this court as provided in Judicial Code Section 240 (a) or that your petitioners may have such other or further relief or remedy in the premises, as to this court may seem meet and appropriate and in conformity with said Act and that the said judgment of the said Circuit Court of Appeals in the said

case, and every part thereof, may be reviewed by this Honorable Court.

And your petitioners will ever pray.

I. H. SPEARS,
Counsel.

GEORGE M. JOHNSON,
of Counsel.

District of Columbia, }
City of Washington. } ss.:

I. H. SPEARS, being duly sworn, says that he is Counsel for petitioners above named, and as such had personal charge for them of the Case in the foregoing petition mentioned in the District Court of the United States for the Eastern District of Michigan, and in the United States Circuit Court of Appeals for the Sixth Circuit, that he has read the said petition by him subscribed and that the facts therein stated are true to the best of his knowledge, information and belief.

I. H. SPEARS.

Subscribed and sworn to before me
this 10th day of July, 1947.

Joseph H. Greene,
(Seal) Notary Public in and for Dist. of Columbia,
My Commission expires Feb. 14, 1948.

BRIEF IN SUPPORT OF PETITION.

Petitioners are citizens of California and Florida; Respondents are citizens of Michigan; the amount in controversy as to each petitioner as against each respondent is in excess of \$3,000.00, exclusive of interest and costs (R. 1 to 6).

Petitioners brought this suit in equity in the United States District Court for the Eastern District of Michigan, Southern Division, asserting an interest in the estate of Mansfield L. Spears, deceased, which estate is in course of probate administration in a state court. This suit is brought against the respondents, and petitioners ask an accounting, declaration of heirship, construction of a will, declaration of interest of petitioners in the estate of Mansfield L. Spears, deceased, declaration of interest of the estate in and to the \$18,234.00 plus in the hands of the defendant, Community National Bank of Pontiac, Michigan in the sole name of Mansfield or M. L. Spears on the 16th day of September 1945; quieting title and partition (R. 1 to 10, Supp. R. Exhibit I, pages 1 and 2).

Article III of the Constitution provides that the judicial power of the United States shall extend to all cases between citizens of different states, and this section gives the District Court original jurisdiction of such cases, and using the language of the Court "one of the grounds of Federal Jurisdiction in Federal Court, is Diversity of Citizenship."

The Federal Courts have jurisdiction of controversies arising during the pendency of the administration of estates of decedents in the state Courts which condition the enforcement of their judgments or decrees or the rights of action of citizens of other states, or other parties, who might in-

voke their actions and their decisions prevail over the statutes of the states and the decisions of their Courts.

Art. III, Sec. 2, Const. U. S.

Act of Congress, 28 U. S. C. A. 41 (1).

Act of Congress, 28 U. S. C. A. 112, Sec. 2, 111 U. S. 223; 121 F. 2nd 921; 150 F. 2nd 679;

Blacker v. Thatcher, 145 F. 2nd 255 (R. 29).

The District Court on motion of respondents dismissed said suit (R. 12 to 23).

The petitioners appealed to the Circuit Court of Appeals for the Sixth Circuit (R. 26 to 28).

On June 5th, 1947, upon consideration of the record in said suit, the Honorable Circuit Court of Appeals for the Sixth Circuit dismissed said suit with prejudice (R. following page 46, and Opinion, Supplemental Record), which action was in conflict with the action of Circuit Court of Appeals of other Circuits, and the Supreme Court of the United States.

Griffith v. Bank of N. Y., 147 F. 2nd 899;

Miama County Nat'l Bank of Paola, Kansas v. Bancroft, 121 F. 2nd 921, Sylb. 2, 3, 4, 5, 10 11, 12;

R. C. P. Rule 12 (b), U. S. C. A. following 723c.

Kaffenberger v. Kremer, *et al.*, 4 F. R. D. 476-478;

Wieland v. Wickard, 250;

Burghane v. Radio Corp. of A., 4 F. R. D. 446;

U. S. v. Assn. Am. R. R., *et al.*, 4 F. R. D. 510;

Application Wis. Alum. Research Foundation, 4 F. R. D. 263;

Wall & B. Corp. v. Munson Lines, 58 F. Supp. 101-109;

Canal v. Munson Hotel Co., 149 F. 2nd 404; 61 F. Supp. 1;

Powell v. Rothensris, 47 F. Supp. 1019;
 Lehigh Valley R. Co. v. Peaslee, 47 U. S. 55;
 Boston Casualty Co. v. Bath Iron Works Corp., 47
 F. Supp. 616;
 Roselle v. Quinn, 47 F. Supp. 740;
 Monhair v. Higgins, 39 F. Supp. 633; 132 F. 2nd
 990;
 Bowles v. Schultz, 54 F. Supp. 708;
 Bowles v. Ohse, 4 F. R. D. 404;
 Rule 8, 28 U. S. C. A. following 723c.

Said judgment entered in this cause by the Honorable
 Circuit Court of Appeals for the Sixth Circuit, on the 5th
 day of June 1947, is in conflict with the decisions of other
 Circuit Court of Appeals on the same questions; has decided
 an important Federal question in a way probably in conflict
 with applicable decisions of this Court, and has so far
 departed from the accepted and usual course of Judicial
 proceedings, and sanctioned such a departure by a lower
 court, as to call for an exercise of this Court's power of
 supervision.

Suydam v. Broadnex, 14 Pet. 67;
 Hyde v. Stone, 20 How. 175.
 Union Bank v. Jolly, Adm'r, 18 How. 503;
 Markham v. Allen, 326 U. S. 490, and cited cases.

The Honorable Circuit Court of Appeals for the Sixth
 Circuit committed error in dismissing said suit with preju-
 dice, for that said judgment is in conflict with a well estab-
 lished long series of decisions of this court, that the Federal
 Courts of equity have jurisdiction to entertain suits "in
 favor of creditors, legatees, and heirs" and other claimants,
 against a decedent's estate "to establish their claims" as
 long as the federal court does not interfere with the pro-
 bate proceedings or assume general jurisdiction of the pro-

bate or control of the property in the custody of the state court.

Snydam v. Broadnax, 14 Pet. 67;

Payne v. Hook, 7 Wall. 425, 430;

Blacker v. Thatcher, 145 F. 2nd 255; 324 U. S. 848;
158 A. L. R. 1;

Markham v. Allen, 326 U. S. 490, and cases cited.

The Circuit Court of Appeals for the Sixth Circuit by its judgment entered in this cause on the 5th day of June 1947, committed error by denying each of the five propositions urged by petitioners as set out in the transcript of record (R. 28, 29, and 30 which is made a part of this brief by reference, and urged as grounds for reversal of the judgment of the Circuit Court of Appeals for the Sixth Circuit as fully as same was urged for reversal of the judgment of the District Court (R. 28-30).)

Argument.

The jurisdiction of the federal court to determine heirship, and interest of creditors, legatees, heirs, and other claimants, is derived from the Constitution and Statutes of the United States, and may not be restricted, or abridged by a state's establishing courts and giving them exclusive jurisdiction over the settling of estates of decedents.

When Diversity of Citizenship and the requisite jurisdictional amount are present, Federal Courts have jurisdiction in equity to determine whether litigants are heirs of a deceased person and their share or asserted interest in his estate.

U. S. Const. Art. III, Sec. 2; 28 U. S. C. A. 41 (1);

28 U. S. C. A. 112, Sec. 2; 1 Stat. 275, 276, 28

U. S. C. A. following Section 723c;

Markham v. Allen, 326 U. S. 490, and cited cases.

The Honorable Circuit Court of Appeals for the Sixth Circuit committed error in dismissing said suit with prejudice, on the 5th day of June 1947, thereby affirming the District Court's error in sustaining each of the motions to dismiss filed by respondents, since said motions, each, admits all matter well plead as set out in paragraph 1 of page 29 of record and paragraph 3 of same page, which errors are also urged before this Court (R. 29 and 30).

Griffith v. Bank of N. Y., 147 F. 2nd 899;

Miama County Nat'l Bank of Paola, Kansas v.

Bancroft, 121 F. 2nd 921 Syl. 2, 3, 4, 5, 10, 11, 12;

R. C. P. Rule 12 (b), 28 U. S. C. A. following 723c.

This is a controversy and a case within the meaning of Article III of the Constitution, between each of the appellants and each of the respondents (Tr. Par. 4, (a) (b) (c) P. 29, 30).

Art. III, Sec. 2, Const. U. S.; 28 U. S. C. A. 41 (1);

28 U. S. C. A. 112, Sec. 2;

Markham v. Allen, 326 U. S. 490;

Waterman v. Canal Louisiana Bank & Trust Co.,
215 U. S. 33;

First National Bank v. Bridgeport Trust Co., 117
Fed. 969;

Garret v. First National Bank & Trust Co., 153
F. 2nd 289.

The Federal Courts cannot decline to hear the issues in a suit of which they have jurisdiction merely because the same questions are pending in a state court between the same parties; the Federal Courts cannot abdicate their authority, or duty in any case in favor of another jurisdiction.

Suydam v. Broadnax, 14 Pet. 67;

Art. III Const. U. S.;

McClelland v. Garland, 217 U. S. 258;

Hastings v. Selby Oil Co., 319 U. S. 348;
 Pure Oil Co. v. Standard Oil Co., 2 F. 2nd 260;
 Banon v. Burnside, 121 U. S. 186;
 Sutton v. English, 246 U. S. 199;
 Byers v. MaAuley, 149 U. S. 608;
 54 Am. Jur. Sec. 8 and Sec. 343;
 Blacker v. Thatcher, 145 F. 2nd 255;
 Rosenberg v. Baum, 153 F. 2nd 13;
 Markham v. Allen, 326 U. S. 490.

Respectfully submitted,

I. H. SPEARS,
Counsel.

GEORGE M. JOHNSON,
of Counsel.

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U.S. - Supreme Court, U. S.

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SEP 10 1947

CHARLES ELWONE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1946

No. 229

WILLIAM TALMADEGE SPEARS, *et al.*,
Petitioners,

vs.

EVA MAE SPEARS, *et al.*,
Respondents.

~~REPLY OF PETITIONERS TO BRIEF OF RESPONDENTS~~
~~FILED~~

PETITIONERS' REPLY TO RESPONDENTS' BRIEF

I. H. SPEARS, *Counsel.*

GEORGE M. JOHNSON,
Of Counsel.



INDEX.

	PAGE
Petitioner's Reply to Respondents' Brief.....	1
Argument	3

CITATIONS.

Anno. Stats. Michigan, Rev. Sec. 27.3178 (19).....	3, 4
Brooks v. Hargrave, 179 Michigan 136.....	3, 4
Barkwell v. Same, 313 Michigan 432.....	3, 4
Bowles Adm'r v. Glick Bro. L. Co. 146 F. 2nd 566.....	3
Columbian Cat Fanciers Inc. v. Koehne <i>et al.</i> , 96 F. 2nd 530-532.....	3, 4
Great Northern Life Ins. Co. v. Read Ins. Commission 322 U. S. 49.....	3, 4
Gaines v. Gaines, 157 F. 2nd 521.....	4
<i>In Re</i> Shadley's Estate, 279 Michigan 156.....	3
<i>In Re</i> Butt's Estate, 173 Michigan 504.....	3
Keefe v. Devonian, 6 F. R. D. 11.....	3
Miller v. National City Bank of N. Y. <i>et al.</i> , 147 F. 2nd 798	3, 4
Michigan Laws, Act No. 288, Chap. 1, Sec. 19, Pub. Acts 1939 as amended by Act No. 26, Pub. Acts 1941, Stat. Ann. 1943, Rev. Sec. 27.3178 (19).....	4
Rule 12 (b) F. R. C. D.....	3
Schultz v. Carlson, 313 Michigan 323.....	3, 4
Tyson v. Jeans, 204 Michigan 403.....	3
Van Kirk <i>et al.</i> Campbell <i>et al.</i> , 7 F. R. D. 231.....	3
Weis v. Los Angeles Broadcasting Co. <i>et al.</i> , 6 F. R. D. 33	3



Supreme Court of the United States

OCTOBER TERM, 1946.

WILLIAM TALMADEGE SPEARS,
et al.,

Petitioners,

VS.

EVA MAE SPEARS, *et al.,*

Respondents.

No. 229.

PETITIONERS' REPLY TO RESPONDENTS' BRIEF

Petitioners say the jurisdiction of the United States Supreme Court is invoked under the authority of the United States Constitution and the Acts of Congress as set forth on pages 2, 3, 4, 5, 6 of petition for Writ of Certiorari and brief in support thereof, pages 10, 11, 12, 13, 14, 15.

Respondents' statement of case (pp. 2-6) shows that several cases are pending in the state court affecting the subject matter of this suit; but that part of the statement at the bottom of page 3 is an erroneous statement of facts, the truth is, at the time of the death of decedent there was an account in the Community National Bank of Pontiac, Michigan, which stood in the sole name of Mansfield L. Spears, and not a joint account as there stated.

Petitioners say the decree entered on May 6, 1946, by the Circuit Court of Oakland County, Michigan in favor of

Eva Mae Spears with reference to said bank account is void, and of no force and effect for the reason the Circuit Court of Oakland County, Michigan, did not have jurisdiction; that the estate of Mansfield L. Spears, deceased was in course of administration in the Probate Court of Oakland County, Michigan; that said Probate Court had exclusive jurisdiction of the administration of estates of deceased persons; that said proceedings could in no way affect the jurisdiction of the Federal court in this cause.

The relief prayed by petitioners is disclosed by the record (pp. 1-10 and Supp. Tr. Exhibit I, at pages 1 and 2 and page 3 of petition for Writ).

The petitioners seek only to have the court determine the interest of petitioners, and the interest of the estate of Mansfield L. Spears, deceased, in the estate of Mansfield L. Spears, deceased, which is in the course of administration in the probate court of Oakland County, Michigan; there is no dispute as to the pendency of the several actions in the state court; except, the pendency of these actions does not affect the jurisdiction of the Federal Court in cases of diversity of citizenship.

The jurisdiction of the probate court of Oakland County, Michigan, of the estate of Mansfield L. Spears, deceased, is exclusive as to the state courts; and no other state court has jurisdiction of any part of said estate.

Therefore, the circuit court judgment mentioned in Respondents' brief at the top of page 4, dated April 16, 1946, is void because the trial court had no jurisdiction over the administratrix, or over the subject matter; and because the decree involves and ousts the lawful jurisdiction of the probate court; and such proceedings void, or otherwise, would not affect the jurisdiction of the Federal court.

Anno. Stats. Michigan, Rev. Sec. 27.3178(19);
 Brooks v. Hargrave, 179 Michigan 136;
 Tyson v. Jeans, 204 Michigan 403;
In Re Shadley's Estate, 279 Michigan 156;
In Re Butt's Estate, 173 Michigan 504;
 Schultz v. Carlson, 313 Michigan 323;
 Barkwell v. Same, 313 Michigan 432.

Rule 12 (b) F. R. C. D. is a rule of procedure, and not jurisdiction, and must be followed as set forth therein.

Columbian Cat Fanciers Inc. v. Koehne *et al.*,
 96 F. 2nd 530-532 (speaking demurrer);
 Bowles Adm'r v. Glick Bro. L. Co., 146 F. 2nd 566.
 Van Kirk *et al.* Campbell *et al.*, 7 F. R. D. 231;
 Keefe v. Devonian, 6 F. R. D. 11;
 Weis v. Los Angeles Broadcasting Co. *et al.*, 6
 F. R. D. 33;
 Miller v. National City Bank of N. Y. *et al.*, 147 F.
 2nd 798;
 Great Northern Life Ins. Co. v. Read Ins. Com-
 mission, 322 U. S. 49.

Argument

Jurisdiction of this court is urged as set forth in petition for Writ of Certiorari and brief in support at pages 13, 14, 15.

The Circuit Court of Appeals for the Sixth Circuit committed error as alleged in petition for writ of certiorari in sustaining the challenge of defendants, by motion to dismiss.

The motion of defendants to dismiss is a speaking demurrer or motion which attempts, in addition to raising the question of sufficiency of the bill of complaint to state a

cause of action, to introduce affirmative facts which if relevant, is properly part of an answer, but not of a motion.

Columbian Cat Fanciers Inc. v. Koehne *et al.*,
96 F. 2nd 530-532;

Gaines v. Gaines, 157 F. 2nd 521;

Great Northern Life Ins. Co. v. Read Ins. Com-
mission, 322 U. S. 49;

Miller v. National City Bank of N. Y. *et al.*, 147
F. 2nd 798:

And as to the effect of the judgment mentioned by re-
spondents anent the bank account, Michigan Laws, Act No.
288, Chap. 1, Sec. 19, Pub. Acts 1939 as amended by Act No.
26, Pub. Acts 1941, Stat. Ann. 1943, Rev. Sec. 27.3178(19),
Provide: "Each judge of Probate shall have jurisdiction:

"5. And shall have and exercise all such other powers
and jurisdiction as are or may be conferred by law."

The Supreme Court of Michigan in Brooks v. Hargrave,
179 Michigan 136, said "It is well established in this state
that the *probate court has exclusive jurisdiction of all
matters relative to the settlement of estates of deceased
persons* * * * there can be no question that the probate court
assumed jurisdiction of the subject matter in controversy
**when the will was admitted to probate and the defendant
qualified as executor.** It does not lose jurisdiction until
the estate is finally closed. Having assumed jurisdiction,
it has exclusive jurisdiction and no other court save an
appellate one which subsequently assumes to act in the
matter, should proceed further when the priority of juris-
diction is called to its attention." Cited in

Schultz v. Carlson, *supra*, Barkwell v. Same, *supra*,

hence the judgment in favor of Respondent, Eva Mae
Spears, mentioned in Respondents' statement, is void, and

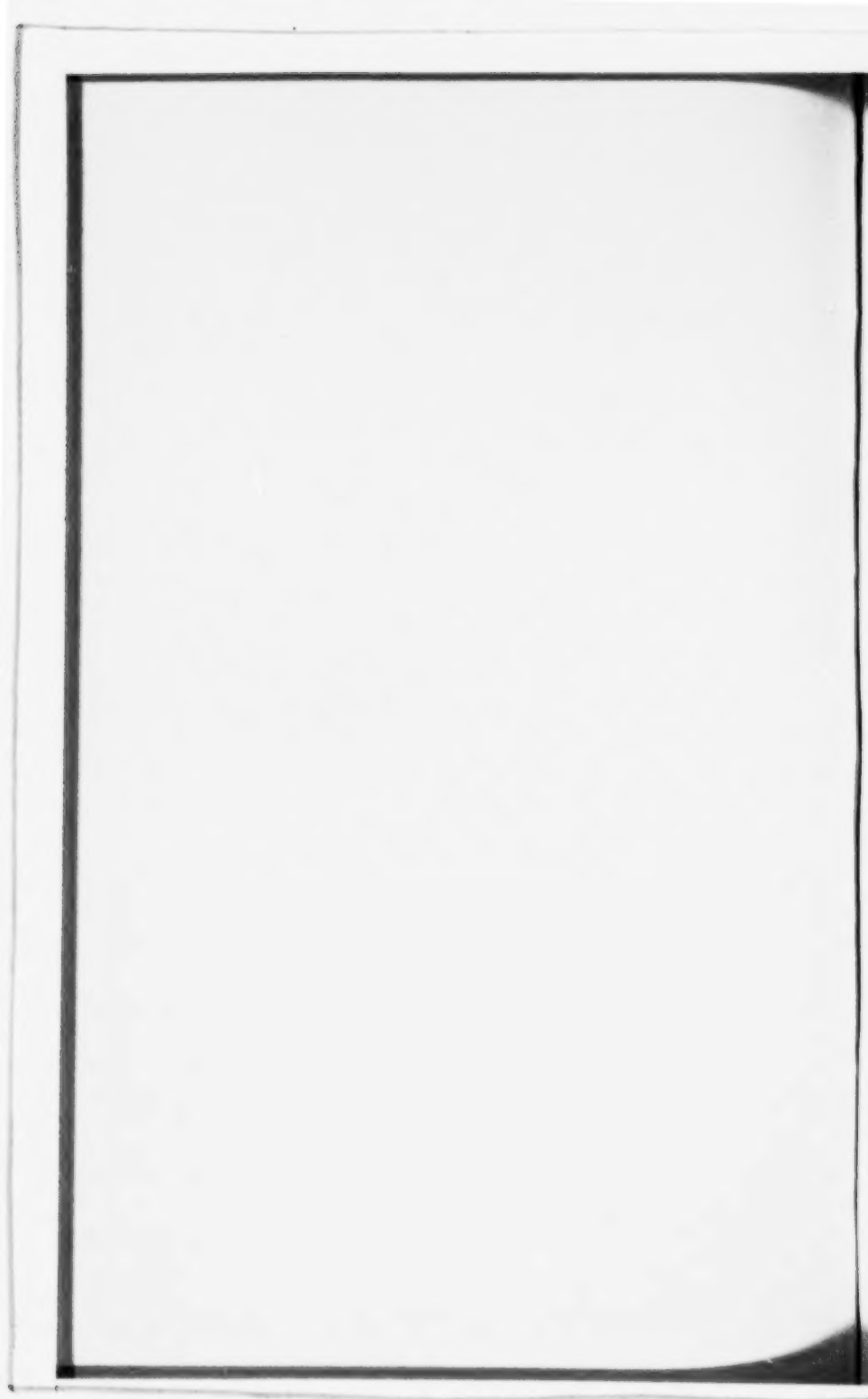
may be attacked any time or place, direct or collateral; and whether void or not, does not affect Federal jurisdiction in this cause.

The Respondents have failed to meet the issue raised, and questions presented by petitioners' Application for Writ of Certiorari and therefore, Petitioners reassert their claim for RELIEF as prayed for in their petition for Writ of Certiorari to the Circuit Court of Appeals for the Sixth Circuit.

Respectfully submitted,

I. H. SPEARS, *Counsel.*

GEORGE M. JOHNSON,
Of Counsel.



INDEX

Subject Index

	Page
Opinion Below.....	1
Jurisdiction	1
Statement of the case.....	2
Questions presented.....	6
Summary of argument.....	7
Argument	9

Table of Cases

Blacker v. Thatcher, 145 F. (2d) 255.....	9
Boro Hall Corp. v. General Motors Acceptance Corp., 124 F. (2d) 822.....	13
Broderick's Will, 21 Wall. 503.....	9, 11
Brown's Estate, 198 Mich. 544, 165 N. W. 929.....	10
Byers v. McAuley, 149 U. S. 608.....	11
Caesar v. Burgess, 103 F. (2d) 503.....	9
Calhoun v. Cracknell, 202 Mich. 430, 168 N. W. 547.....	10
Ellis v. Stevens, 37 Fed. Supp. 488.....	13
Gallup v. Caldwell, 120 F. (2d) 90.....	13
Guilfoil v. Hayes, 86 F. (2d) 544.....	9
Kvos, Inc. v. Associated Press, 299 U. S. 269.....	12
Markham v. Allen, 326 U. S. 490.....	10, 11
McNutt v. General Motors Acceptance Corp., 298 U. S. 178.....	12
Miami County National Bank v. Bancroft, 121 F. (2d) 921.....	9
O'Callaghan v. O'Brien, 199 U. S. 89.....	9, 11

	Page
O'Connor v. Slaker, 22 F. (2d) 147.....	9
Penn. General Casualty Co. v. Pennsylvania, 294 U. S. 189.....	11
Princes Lida v. Thompson, 305 U. S. 456.....	10
Samara v. United States, 129 F. (2d) 594.....	13
Stevens v. Hope, 52 Mich. 65, 17 N. W. 698.....	10
Sutton v. English, 246 U. S. 199.....	10, 11
Thompson v. Thompson, 229 Mich. 526, 201 N. W. 533	10
United States v. Bank of New York & Trust Co., 296 U. S. 463.....	11
Victory v. Manning, 128 F. (2d) 415.....	13
Waterman v. Canal-Louisiana Bank & Trust Co., 215 U. S. 33.....	10, 11
Yudin v. Carroll, 57 Fed, Supp. 793.....	13

Statutes

Michigan Statutes Annotated, Sec. 37.3178 (19 et seq.)	10
Federal Rules of Civil Procedure, Rule 12 (b), 28 U. S. C. A. fol. Sec. 723.....	7-8, 12

**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1947

No. 229

**WILLIAM TALMADGE SPEARS, BETTIE TUNSELL, and
I. H. SPEARS,**
Petitioners and Appellants Below,

v.

**EVA MAE SPEARS, Individually, and EVA MAE SPEARS as
Special Administratrix of the Estate of Mansfield L. Spears,
Deceased, THE AETNA CASUALTY AND SURETY
COMPANY of Hartford, Connecticut, and COMMU-
NITY NATIONAL BANK of Pontiac, Michigan,**
Respondents and Appellees Below.

**On Petition for a Writ of Certiorari to the United States
Circuit Court of Appeals for the Sixth Circuit**

BRIEF FOR RESPONDENTS

OPINION BELOW

The opinion in the Circuit Court of Appeals is reported
inF. (2d) (Supp. to Supp. R. 47-52).

JURISDICTION

Petitioners have invoked the jurisdiction of this Court
under Section 1(a) of the Act of February 13, 1925, as
amended, U. S. C. A. Title 28, Section 347(a). The judg-
ment of the Circuit Court of Appeals was entered on
June 5, 1947. (Supp. to Supp. R. 46).

I

STATEMENT OF THE CASE

This is an action praying for equitable relief brought in the District Court of the United States for the Eastern District of Michigan, Southern Division, by William Talmadge Spears, Bettie Tunsell, and I. H. Spears, petitioners herein, against Eva Mae Spears, individually, and as special administratrix of the estate of Mansfield L. Spears, deceased, The Aetna Casualty and Surety Company, surety on the bond of the special administratrix, Leon H. Hubbard, successor special administrator of the estate of Mansfield L. Spears, deceased, and Community National Bank of Pontiac, Michigan, respondents herein, on May 25, 1946, growing out of the following facts:

Mansfield L. Spears, a resident of Oakland County, Pontiac, Michigan, died on September 16, 1945. He left surviving him his widow, Eva Mae Spears, one of the respondents herein, and William Talmadge Spears, one of the petitioners herein as his heirs at law and next of kin. Between March 28, 1945, and the date of his death, the decedent executed three successive wills, namely, one on March 28, 1945, one on August 13, 1945, and one on August 27, 1945, and in each of which he specifically revoked all prior wills (R. 3, 4, 12; Ex. VI, Supp. R. 14).

The will executed on August 27, 1945, was presented to the Probate Court of Oakland County, Michigan, by Eva Mae Spears, the surviving widow, as the Last Will and Testament of the decedent, and the petitioners and other relatives objected to the admission of that will to probate, and gave notice that they would contest its validity (Ex. I, Supp. R. 1, Ex. IV, Supp. R. 8, 9, 10).

On petition of the contestants, the Probate Court certified the contest to the Circuit Court of Oakland County, Michigan, in accordance with the provisions of Section 27, 3178 (36) of Michigan Annotated Statutes (Ex. V, Supp. R. 11, 12). By its decree entered on May 9, 1946, the Circuit Court of Oakland County, Michigan, allowed the will executed on August 27, 1945, as the Last Will and Testament of Mansfield L. Spears, deceased, and directed the Probate Court to admit it to probate (Exs. VI, VII, Supp. R. 14-19).

The Probate Court of Oakland County, Michigan, appointed Eva Mae Spears special administratrix to take charge of, and protect, the estate of Mansfield L. Spears, deceased, pending a decision in the will contest in the Circuit Court, and The Aetna Casualty and Surety Company became the surety on her bond (R. 2).

Subsequently, on petition of the contestants, the Probate Court removed Eva Mae Spears as special administratrix, and appointed Leon H. Hubbard as her successor (Exs. II, III, Supp. R. 5, 6, 7). Thereafter, Eva Mae Spears filed her account as special administratrix, to which the contestants and petitioners filed objections, and after a hearing, the Probate Court allowed the account, and discharged Eva Mae Spears and released her surety from liability.

At the time of the decedent's death, there was an account in Community National Bank of Pontiac, Michigan, which stood in the joint names of Mansfield L. Spears and Eva Mae Spears, with the right of survivorship. A controversy arose between the petitioners and Eva Mae Spears over the ownership of the joint bank account. Eva Mae Spears filed a suit in the Circuit Court of Oakland County, Michigan, in which she joined petitioners and

others claiming an interest in the estate, and Community National Bank as parties defendant, to establish her ownership of the bank account as the surviving joint depositor (Exs. VIII, IX, Supp. R. 20-31). The Circuit Court, by its "opinion" dated April 16, 1946 (Ex. X, Supp. R. 32-38), and its "amended decree" entered on May 6, 1946, held that the joint deposit in Community National Bank survived to, and became the sole property of, Eva Mae Spears upon the death of Mansfield L. Spears, and that it was no part of his estate for administration (Ex. XI, Supp. R. 39-42).

Petitioners appealed from the decrees of the Circuit Court of Oakland County, Michigan, in both the will contest and the suit of Eva Mae Spears to establish ownership of the joint bank deposit to the Supreme Court of Michigan, and that court dismissed both appeals on March 4, 1947, whereupon I. H. Spears, one of the petitioners herein, prosecuted appeals to this court where they were treated as petitions for certiorari, and were both denied by this court on June 2, 1947. (*Spears v. Spears*, U. S., 67 S. Ct. 1517, 1524.)

It was against this background that this action was brought in the District Court. The complaint recites some of the facts set forth herein, and it particularly mentions the wills executed on March 28, 1945, and on August 13, 1945, and quotes the latter at length (R. 3, 4, 5), but it fails to mention the will executed on August 27, 1945, or the fact that it had been admitted to probate after a contest. Neither did the complaint mention the fact that the Circuit Court of Oakland County, Michigan, had adjudged the ownership of the joint deposit in Community National Bank. The complaint also omitted any mention of the fact that Eva Mae Spears had filed her account as special ad-

ministratrix which had been allowed by the Probate Court of Oakland County, Michigan, over the objections of petitioners, and that she and her surety had been discharged from liability.

The prayer for relief was: (1) that the District Court admit the will executed on August 13, 1945, to probate as the Last Will and Testament of Mansfield L. Spears, deceased; (2) for a determination of the heirs of the deceased; (3) for an adjudication of the ownership of the joint bank account in Community National Bank; (4) for an accounting of the fiduciaries appointed by the Probate Court of Oakland County, Michigan; (5) for a decree of distribution of the estate in accordance with the provisions of the will executed on August 13, 1945; and (6) for a decree to quiet title in real estate (R. 5-10).

All of the defendants below, except Leon H. Hubbard, special administrator, filed separate motions to dismiss the suit under Rule 12(b), (1), (2), (4), (5), and (6 of Federal Rules of Civil Procedure, and annexed as exhibits thereto certified transcripts of the proceedings in the State Courts to show: (1) lack of jurisdiction over the subject-matter; (2) failure of the complaint to state a claim upon which relief could be granted; and (3) lack of jurisdiction over The Aetna Casualty and Surety Company because of improper service of process (R. 12-22, Exs. I-XI, Supp. R. 1-43).

The District Court sustained all motions, and dismissed the suit without prejudice to the rights of petitioners to refile it at the conclusion of the litigation in the State Courts, and it quashed the service of process on The Aetna Casualty and Surety Company on account of insufficient and improper service (R. 22, 23). Petitioners appealed from the District Court's order of dismissal, and

the Circuit Court of Appeals affirmed that order, except that the District Court was directed to dismiss the suit with prejudice (Supp. to Supp. R. 47-52).

II

QUESTIONS PRESENTED

(1) Whether the Federal Court has jurisdiction to probate a will or to construe an instrument purporting to be a will which has not been admitted to probate.

(2) Whether the Federal Court has jurisdiction to require an accounting of a fiduciary appointed by a State Court.

(3) Whether the Federal Court can interfere with property in the custody and possession of a State Court.

(4) Whether the probate of wills and the administration of estates constitute a suit or action *inter partes* within the equity jurisdiction of the Federal Court.

(5) Whether Rule 12(b) of Federal Rules of Civil Procedure authorizes "speaking motions" to traverse the truth of the allegations of a complaint as to jurisdiction.

III

SUMMARY OF ARGUMENT

POINT A

The decision of the Circuit Court of Appeals as to the lack of jurisdiction in the Federal Court to probate a will or to construe an instrument purporting to be a will which has not been admitted to probate; or to require an accounting of fiduciaries appointed by a State Court; or to adjudicate the ownership of property in the possession and control of a State Court, is not in conflict with the Circuit Court of Appeals of any other Circuit.

POINT B

The decision of the Circuit Court of Appeals as to the nature of probate proceedings under the statutes and decisions of Michigan is not an important question of local law which is in conflict with applicable local decisions.

POINT C

The decision of the Circuit Court of Appeals, by holding that the probate of wills and the administration of estates in Michigan is not a suit or action *inter partes* within the equity jurisdiction of the Federal Court, involves no important question of federal law which has not been passed upon, and settled by this Court.

POINT D

The decision of the Circuit Court of Appeals as to the effect of a motion to dismiss under Rule 12(b), Federal

Rules of Civil Procedure, by holding that where the motion traverses the truth of the allegations as to jurisdiction, and recites facts *de hors* the record, it does not constitute an admission of facts, is not a decision of a federal question in a way in conflict with applicable decisions of this Court.

POINT E

The decision of the Circuit Court of Appeals as to lack of jurisdiction in the Federal Court to grant any of the relief prayed for in petitioners' complaint, by holding that the suit should be dismissed with prejudice, neither departs from the accepted and usual course of judicial proceedings, nor sanctions such a departure by a lower court, and it does not call for an exercise of this Court's power of supervision.

IV

ARGUMENT

Point A

The decision of the Circuit Court of Appeals as to the lack of jurisdiction in the Federal Court to probate a will or to construe an instrument purporting to be a will which has not been admitted to probate; or to require an accounting of fiduciaries appointed by a State Court; or to adjudicate the ownership of property in possession and control of a State Court, is not in conflict with the Circuit Court of Appeals of any other circuit. On the contrary, there is complete harmony in the decisions of the Circuit Courts of Appeals for the several circuits on the same matter.

O'Connor v. Slaker, 22 F. (2d) 147, Appeal Dis-
missed, 278 U. S. 188.

Guilfoil v. Hayes, 86 F. (2d) 544.

Caesar v. Burgess, 103 F. (2d) 503.

Miami County National Bank v. Bancroft, 121 F.
(2d) 921.

Blacker v. Thatcher, 145 F. (2d) 255.

There is no conflict between the several circuits, for the several Circuit Courts of Appeals have adopted the rule established in this Court by a long line of decisions on the same question.

Broderick's Will, 21 Wall. 503.

O'Callaghan v. O'Brien, 199 U. S. 89.

Waterman v. Canal-Louisiana Bank & Trust Co.,
215 U. S. 33.

Sutton v. English, 246 U. S. 199, 205.

Princes Lida v. Thompson, 305 U. S. 456.

Markham v. Allen, 326 U. S. 490.

Point B

The decision of the Circuit Court of Appeals as to the nature of probate proceedings under the statutes and decisions of Michigan is not an important question of local law which is in conflict with applicable local decisions. On the contrary, the decision by the Circuit Court of Appeals in the instant case is in complete harmony with the local decisions. The Statutes of Michigan provide for the procedure to be followed in probating a will, and in disposing of estates of deceased persons, and protection is provided for the rights of all parties in interest.

Michigan Statutes Annotated, Section 27.3178 (19),
(36), (50), (91), and (94).

The Supreme Court of Michigan has held that the probate of wills and the administration of estates are not proceedings *in personam*, but belong rather to a class of action *in rem* or *quasi in rem*.

Stevens v. Hope, 52 Mich. 65, 17 N. W. 698.

In re Brown's Estate, 198 Mich. 544, 165 N. W. 929.

Calhoun v. Cracknell, 202 Mich. 430, 168 N. W. 547.

Thompson v. Thompson, 229 Mich. 526, 201 N. W. 533.

In the case of *Thompson v. Thompson*, *supra*, the Court specifically held that the administration of estates is not in the nature of a suit between parties.

Point C

The decision of the Circuit Court of Appeals, by holding that the probate of wills and the administration of estates in Michigan is not a suit or action *inter partes* within the equity jurisdiction of the Federal Court, involves no important question of federal law which has not been passed upon, and settled by this Court. While the questions involved relate to the jurisdiction of a Federal Court over the probate of a will, the administration of an estate, including the accounting of the fiduciary, and the property in possession of a State Court, and while the jurisdiction of Federal Courts is governed by federal law, this Court has already settled those questions insofar as they are presented by the facts of the instant case.

Broderick's Will, 21 Wall. 503.

Byers v. McAuley, 149 U. S. 608.

O'Callaghan v. O'Brien, 199 U. S. 89.

Waterman v. Canal-Louisiana Bank & Trust Co.,
215 U. S. 33.

Sutton v. English, 246 U. S. 199.

Penn. General Casualty Co. v. Pennsylvania, 294
U. S. 189, 105, 106.

United States v. Bank of New York & Trust Co.,
296 U. S. 463, 477.

Markham v. Allen, 326 U. S. 490, 494.

The uncontroverted facts of this case demonstrate clearly that the District Court lacked jurisdiction over the subject-matter of the complaint filed by petitioners upon any theory when those facts are measured by the rules laid down by this Court in *O'Callaghan v. O'Brien*, *supra*. The Circuit Court of Appeals scrupulously followed the decisions of this Court in its decision.

Point D

The decision of the Circuit Court of Appeals as to the effect of a motion to dismiss under Rule 12(b), Federal Rules of Civil Procedure, by holding that where the motion traverses the truth of the allegations as to jurisdiction, and recites facts *de hors* the record, it does not constitute an admission of facts, is not a decision of a federal question in a way in conflict with applicable decisions of this Court. On the contrary, the Circuit Court of Appeals followed the decisions of this Court in holding that the respondents properly annexed affidavits and certified transcripts of the proceedings in the State Courts to traverse the truth of the allegations of petitioner's complaint as to jurisdiction.

Kvos, Inc. v. Associated Press, 299 U. S. 269, 278.

The burden rested upon petitioners to support their jurisdictional allegations by competent proof when the truth of those allegations was challenged by respondents in any appropriate manner.

McNutt v. General Motors Acceptance Corp., 298 U. S. 178, 189.

Petitioners had to allege in their complaint the facts essential to show that the District Court had jurisdiction. They attempted to do so by concealing the existence of a will which had been admitted to probate after a contest, and by suppressing the facts pertaining to the State Court litigation (R. 1-10). If they failed to make the jurisdictional allegations, they would have no standing. If they made the necessary allegations and if they were untrue, they would likewise have no standing. Rule 12(b), Federal Rules of Civil Procedure, authorized the respondents to challenge the truth of the allegations as to jurisdiction by motions

to which were annexed exhibits which evidenced uncontradicted facts to show that the jurisdictional allegations were not true, and that the Court was without jurisdiction to grant the relief prayed for in the complaint.

Gallup v. Caldwell, 120 F. (2d) 90.

Boro Hall Corp. v. General Motors Corp., 124 F. (2d)

822, Certiorari denied, 317 U. S. 695.

Victory v. Manning, 128 F. (2d) 415.

Samara v. United States, 129 F. (2d) 594.

Ellis v. Stevens, 37 Fed. Supp. 488.

Yudin v. Carroll, 57 Fed. Supp. 793.

Point E

The decision of the Circuit Court of Appeals as to lack of jurisdiction in the Federal Court to grant any of the relief prayed for by petitioners, by holding that the suit should be dismissed with prejudice, neither departs from the accepted and usual course of judicial proceedings, nor sanctions such a departure by a lower court, and it does not call for an exercise of this Court's power of supervision. The suggestion in petitioners' petition and brief that the Circuit Court of Appeals has departed from the accepted and usual course of judicial proceedings, or has sanctioned such a departure by the District Court, is almost too frivolous to require reply. Certainly there is nothing in the history of this case to suggest that either the District Court or the Circuit Court of Appeals has in any way violated the integrity of the federal judicial process. The petitioners were the ones who were seeking to have the District Court and the Circuit Court of Appeals depart from the accepted and usual course of judicial proceedings.

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this Court, and that the petition for a writ of certiorari should be denied.

ELMER W. BEASLEY,
WALTER A. MANSFIELD,
GEORGE A. SUTTON,
Counsel for Respondents.

Dated August 14, 1947.

CERTIORARI

DENIED